

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
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VS

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/508,695 05/18/00 BALLEVRE

O P00.0164

HM22/0117

EXAMINER

RELL, BOYD & LLOYD, LLC  
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CHICAGO IL 60690-1135

LUKTON, D

ART UNIT

PAPER NUMBER

12

1653

DATE MAILED:

01/17/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

## Office Action Summary

Application No 09/508,635	Applicant(s) Ballevre
Examiner David Lukton	Group Art Unit 1653

Responsive to communication(s) filed on Dec 4, 2000

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle* 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

### Disposition of Claim

Claim(s) 1-10 is/are pending in the application.  
Of the above, claim(s) 7 is/are withdrawn from consideration.  
 Claim(s) \_\_\_\_\_ is/are allowed.  
 Claim(s) 1-6 and 8-10 is/are rejected.  
 Claim(s) \_\_\_\_\_ is/are objected to.  
Claims \_\_\_\_\_ are subject to restriction or election requirement.

### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on \_\_\_\_\_ is approved disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None  of the CERTIFIED copies of the priority documents have been received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_

received in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

### Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

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--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Applicants species election is acknowledged. Applicants have elected a protein hydrolyzate as the species. Previously (paper No. 7, filed 10/27/00), applicants elected Group I.

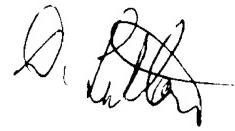
Claims 1-6 and 8-10 in part are examined in this Office action. Claim 7 is withdrawn from consideration.

\*

35 U.S.C §101 reads as follows:

"Whoever invents or discovers any new and useful process, machine, manufacture or composition of matter or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title".

Claims 1-6 and 8-10 are rejected under 35 U.S.C. §101 because "use" not a proper statutory class. (*Clinical Products v. Brenner* 149 USPQ 475).

  
DAVID LUKTON  
PATENT EXAMINER  
GROUP 1800

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Lukton [phone number (703)308-3213].

An inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.